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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Sontheimer <i>et al.</i>	Examiner:	Chen, Shin Lin
Patent No.:	7678759		
Serial No.:	10/686,782	Art Unit:	1632
Filed:	October 17, 2003	Conf. No.:	7705
For:	Diagnosis and Treatment of Neuroectodermal Tumors		

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(b)

This paper is a request for reconsideration of the patent term adjustment indicated in the Issue Notification for the above-referenced patent. A copy of the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) is attached and labeled "Exhibit A." The patent issued on March 16, 2010; a request for reconsideration of the Patent Term Adjustment was due within two months of the issue date, *i.e.*, May 16, 2010. May 16, 2010 falls on a Sunday. Thus, Applicants submit that this present request is timely filed on Monday, May 17, 2010.

In accordance with 37 C.F.R. § 1.705(b)(1), Applicants submit that an amount of \$200.00 as set forth in 37 C.F.R. §1.18(e) is being paid via the U.S. Patent and Trademark Office's electronic filing system's credit card payment option.

Applicants submit that the correct patent term adjustment under 35 U.S.C. § 154(b) up to the Issue Date is 638 days. Applicants provide the following statement of facts in accordance with 37 C.F.R. § 1.705(b)(2):

According to the Patent Term Adjustment (PTA) calculated by the U.S. Patent and Trademark Office (USPTO), the total PTA is 478 days (USPTO delay of 687 days reduced by Applicants' delay of 209 days). A copy of Patent Term Adjustment History posted on the USPTO's PAIR website is attached as Exhibit B. As indicated on Exhibit B, in calculating USPTO delay, the USPTO has included a period of 219 days, apparently the duration of the "B" delay, also known as the "three-year pendency" delay. Applicants respectfully submit that period of "B" delay should be calculated from October 17, 2006 (*i.e.*,

three years from the actual filing date of the application (October 17, 2003) until October 31, 2007, the date that Applicants filed a Request for Continued Examination. This period is 379 days and does *not* include any days that were already counted as USPTO delay for the “A” delay calculation.

Accordingly, the total PTA (“A” + “B” delay) should be 160 days (379 days minus 219 days) greater than the PTA calculated by the USPTO, as listed in Exhibit A, in other words, 478 days plus 160 days. Thus, the correct patent term adjustment under 35 U.S.C. § 154(b) up to the Issue Date is **638** days.

Applicants submit that the patent to be issued is not subject to a terminal disclaimer.

If for any reason, this Petition is found not to comply with the requirements of 37 C.F.R. § 1.705, or is otherwise found improper, please contact the undersigned attorney by telephone.

Respectfully submitted,

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